



Final Report of the Task Force to Develop An Olmstead Plan for Virginia

**Presentation to the
Governor's Housing Conference
November 13, 2003**

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FINAL REPORT OF THE TASK FORCE TO DEVELOP AN OLMSTEAD PLAN FOR VIRGINIA

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- **Item 329 M of the 2002 Appropriation Act directed the Department of Mental Health, Mental Retardation and Substance Abuse Services to convene a task force to develop recommendations to implement the Olmstead decision in Virginia.**
- **The Task Force first met in July 2002 and completed its work in August. Its Final Report was submitted to the Governor, the Joint Commission of Health Care, and the Chairs of the House Appropriations and Senate Finance Committees September 15.**

Today I will cover:

- **The Olmstead Decision;**
- **How the Task Force Conducted its Work;**
- **The Housing Issues and Recommendations in the Final Report; and**
- **Next Steps.**



The Olmstead Decision

- Olmstead v. L.C., 527 U.S. 581 (1999) involved a challenge under Title II of the Americans With Disabilities Act (ADA), 42 U.S.C. § 12132, by two women with mental disabilities who lived in mental health facilities operated by the state of Georgia, but who wished to live in the community.
- The U.S. Supreme Court held that unjustified isolation is properly regarded as discrimination based on disability.

The Court held that a State is required under Title II of the ADA to provide community-based treatment for persons with mental disabilities when:

- The State's treatment professionals determine that such placement is appropriate;**
- The affected persons do not oppose such placement; and**
- The placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with disabilities.**

States must make reasonable modifications to programs in order to provide community-based services to qualified individuals, unless doing so would fundamentally alter the services provided. This “reasonable modification” standard is met if the state can demonstrate that it has:

- A comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings; and**
- A waiting list that moves at a reasonable pace not controlled by the State’s endeavors to keep its institutions fully populated.**

States can resist modifications that entail a fundamental alteration of the state’s services and programs.

In evaluating a State's fundamental alteration defense, the courts must consider, in view of the resources available to the State:

- The cost of providing community-based care;**
- The State's responsibility for maintaining a range of services for the care of persons with diverse disabilities; and**
- The State's obligation to mete out services equitably.**

A simple comparison of the cost of providing care for individuals in the community with the cost of institutional care is not sufficient.

Although Olmstead involved two individuals with a mental disability, the decision is broad in its scope and applies to all qualified persons with disabilities covered by the ADA.

- It applies to all qualified individuals with disabilities, be they mental, physical or sensory disabilities.**
- It applies to both individuals who are institutionalized and individuals who are at risk of institutionalization.**



Virginia's Olmstead Task Force

- **Virginia's Task Force was chaired by Secretary Woods and had 70 members representing individuals with disabilities, family members, advocates, providers, local government, members of the General Assembly, and other stakeholders.**
- **15 state agencies that provide or oversee services to individuals with disabilities served as members of, and provided resources to support, the Task Force.**

- **Board for People with Disabilities (VBPD);**
- **Department for the Aging (VDA);**
- **Department for the Blind and Vision Impaired (DBVI);**
- **Department for the Deaf and Hard of Hearing (VDDHH);**
- **Department of Education (DOE);**
- **Department of Health (VDH);**
- **Department of Housing and Community Development (DHCD);**
- **Department of Medical Assistance Services (DMAS);**

- **Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS);**
- **Department of Rehabilitative Services (DRS);**
- **Department of Social Services (DSS);**
- **Office of Comprehensive Services (OCS);**
- **Virginia Assistive Technology Loan Fund Authority (ATLFA);**
- **Virginia Housing Development Authority (VHDA); and**
- **Virginia Office for Protection and Advocacy (VOPA).**

The Task Force used two primary concurrent planning processes:

- ***Populations and services data***, including a survey of all nursing homes, assisted living facilities and other residential providers and a consumer and family feedback form, all of which appear in Appendix B of the Report; and
- ***Eight cross-disability “Issues Teams”*** that explored barriers to community services and supports, identified issues and proposed specific recommendations.

The Teams, whose reports appear in Appendix C of the Report, were:

- **Accountability**
- **Educating the Public, Consumers and Families**
- **Employment**
- **Housing**
- **Prevention and Transition Services**
- **Qualified Providers**
- **Transportation**
- **Waivers**

- Each Team was chaired by a non-State agency representative, had both Task Force and non-Task Force members, and held multiple meetings during the course of the year.
- The Housing Team was chaired originally by Bill Fuller, and later by Barbara Gilley; VHDA and DHCD assisted this Team, which had 17 members and met 10 times throughout the course of the year.
- The Chairs of the Issues Teams and several state agency representatives comprised the Task Force Steering Committee, which met nine times to advise and make recommendations to the Task Force.



In addition to the Consumer and Family Feedback Form (which elicited over 440 responses), public comment was sought throughout the process:

- Live and at remote sites November 4, 2002;**
- April 15 to May 13, 2003 on the Interim Report;**
- Live and at remote sites June 9, 2003; and**
- June 20 to July 18, 2003 on the Draft Final Report.**

- **Many other comments were received outside of these formal comment periods.**
- **In order to consider adequately over 110 comments received in response to the Draft Final Report, the Task Force received an extension for submitting the report, from August 31 to September 15, 2003.**
- **All public comment appears in Appendix E to the Final Report.**

The Final Report of the Olmstead Task Force

The Final Report is divided into:

- **Overview;**
- **Main Body of the Report;**
- **Glossary of Terms; and**
- **Seven Appendices.**

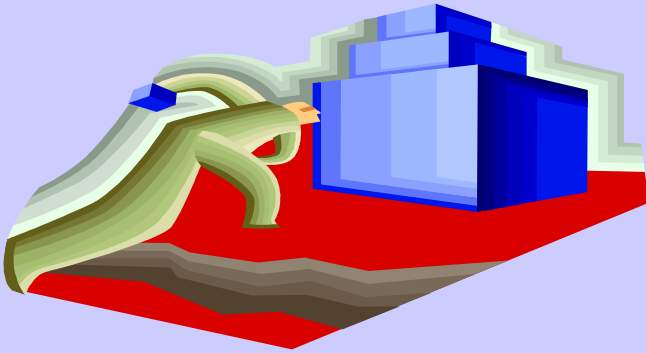
The Overview contains:

- **Executive Summary;**
- **Vision and Goals Statement; and**
- **Listing of over 200 recommendations contained within the report, set out by time frame for implementation and responsible entity.**



Key Components of the Vision

- Individual consumer choice
- Consumer-directed services and supports
- Accountability to consumers, family members, decision-makers and the public
- Sufficient numbers of qualified providers
- **Safe, available, accessible and affordable housing and transportation**
- An opportunity to work
- A full continuum of care, from self care through institutional care



Goals

Qualified individuals with disabilities in Virginia must, if they choose, be afforded the opportunity to:

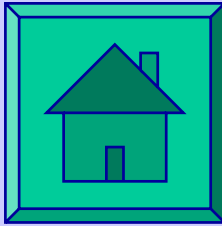
- ***Move to*** a more integrated setting appropriate to their needs;
- ***Stay in*** the community of their choice once they have moved into a setting that is appropriate for their needs;
- ***Live successfully in*** the community of their choice while receiving appropriate services in order to prevent unwanted institutionalization; and
- ***Work collaboratively*** with all public and private partners to ensure the implementation of the Olmstead decision.

The Report itself is organized alphabetically into 10 general topic areas, each with corresponding issues and recommendations:

- **Consumer Choice of/Access to Needed Services and Supports**
- **Consumer and Family Involvement**
- **Consumer Rights, Health and Safety**
- **Educating Consumers, Family Members and Providers**
- **Educating the Public**
- **Employment**
- **Housing**
- **Research and New Knowledge**
- **Transportation**
- **Workforce and Qualifications of Providers**
- **Olmstead Planning and Implementation**

Each recommendation also contains implementation actions, responsible entities, and a general time frame during which each proposed action would be initiated:

- An “immediate” time frame means FY 2004;**
- A “short term” time frame means FY 2005- 2006;**
- A “medium term” time frame means FY 2007- 2008;
and**
- A “long term” time frame means FY 2009 and beyond.**



Housing Issues and Recommendations

- **A wide range of community housing stock and models of support is not available because of a lack of adequate subsidies and other factors.**
 - ✓ *Provide additional financial support for housing subsidies or income supplements.*
 - ✓ *Prioritize needs of people with disabilities in allocating housing subsidies and technical assistance resources.*
 - ✓ *Provide ongoing training in Universal Design.*
 - ✓ *Build adequate local infrastructure to support community-based housing opportunities.*

- **Housing units lack accessibility features for persons with mobility or sensory limitations.**
 - ✓ *Increase effective enforcement of existing State building regulations.*
 - ✓ *Increase understanding and enforcement of the accessibility requirements of the Fair Housing Act, the ADA, and Section 504 of the Rehabilitation Act of 1973.*
 - ✓ *Modify the existing housing stock to meet accessibility needs*

➤ **Individuals with disabilities leaving institutions and those seeking to move to more integrated settings cannot locate housing that is available, affordable, accessible and appropriately situated with respect to the availability of supportive services.**

- ✓ *Increase State-level understanding of local and regional needs and priorities.*
- ✓ *Assist people with disabilities in accessing housing suitably adapted to their individual needs.*
- ✓ *Eliminate local regulatory barriers to affordable, accessible housing.*
- ✓ *Eliminate landlord discrimination against Section 8 voucher holders and other benefit recipients.*
- ✓ *Provide a notification system so that people with disabilities receive advance notice of the availability of accessible housing units.*

- **Some individuals with disabilities cannot visit the homes of their friends, families and co-workers because of physical barriers. Virginia needs a visit-ability law to apply to planners and builders of homes and apartment complexes.**
 - ✓ ***Expand accessibility requirements under the Uniform Statewide Building Code (USBC) to include the following visit-ability standards: 1) one zero step entrance; 2) an accessible path to the entrance; 3) 32-inch-wide doors throughout the ground floor; 4) accessible environmental controls; 5) one usable bathroom on the ground floor; and 6) reinforcements behind bathroom walls.***

➤ **The current ALF system does not adequately address the need for quality supportive housing for lower income persons. Sole reliance on the current Auxiliary Grant program as a subsidy source inhibits efforts to improve the quality of ALFs or to develop appropriate alternative options.**

✓ ***The Joint Commission on Health Care, DSS and DMHMRSAS should establish alternative funding mechanisms to the current Auxiliary Grant program for subsidizing assisted living services.***

- **Individuals with disabilities who wish to exercise the same range of choices available to those without a disability face numerous barriers, including lack of accessibility features; high housing costs; and limited availability.**
- ✓ *Maximize the use of Federal Housing Choice Vouchers.*
- ✓ *Maximize the use of Federal deep "project-based" housing subsidies.*

Recommendations to Continue Olmstead Planning and Assure Implementation

- **Require state agencies to collaborate to implement the recommendations in the Report, including costing them out.**
- **Develop a mechanism to compile waiting list data from nursing homes and assisted living facilities.**
- **Designate one person to be charged with implementing the recommendations and a stakeholder group to prioritize them.**
- **Retain an “outside system” to organize and analyze existing data and collect additional data for use in future Olmstead planning.**



Next Steps

Governor Warner will work with Secretary Woods to:

- *Establish a collaborative, multi-agency team to cost out recommendations in the report;*
- *Direct state agencies to implement administrative actions that do not require legislation or funding and prepare legislative and budget proposals for his consideration; and*
- *Establish Olmstead Oversight Advisory Committee comprised of individuals with disabilities, family members, advocates and providers, to monitor implementation of the recommendations, receive annual progress reports from multi-agency team and advise the Governor on suggested policy and administrative revisions.*



The Report and further information about the Olmstead decision and Virginia's Task Force are available on the Task Force's website at www.olmsteadva.com.